

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001592-MR
AND
NO. 2003-CA-002410-MR

ALVIN JONES

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOPF, JUDGE
INDICTMENT NO. 01-CR-001061

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, McANULTY, AND MINTON, JUDGES.

MINTON, JUDGE: This appeal challenges the interpretation given to a judgment of the Jefferson Circuit Court. Alvin R. Jones pled guilty to escape in the second degree, enhanced by his status as a second-degree persistent felony offender (PFO). He was sentenced accordingly and imprisoned. Almost two years later, he filed a motion with the sentencing court to end further execution of his sentence, claiming the language of the judgment had been improperly interpreted. The motion was

denied. He later filed another motion for jail-time credit or to cease further incarceration. Again, the motion was denied. Jones now appeals the denial of those motions. Because the judgment clearly sentenced Jones to five years' imprisonment, and because Jones is ineligible for any jail-time credit, we affirm.

Jones was originally sentenced to jail for six months on a misdemeanor theft conviction for shoplifting. He was put on work release on February 13, 2001. Although Jones read and signed the release agreement recognizing that unauthorized absence from the facility would result in an escape charge, he failed to report back to jail. He was apprehended on March 23, 2001. He was then indicted for second-degree escape and for being a second-degree PFO.

On July 30, 2001, Jones pled guilty to the charges in the indictment. He was sentenced to four years for the escape charge, enhanced to five years as a PFO II. The judgment of conviction read as follows: "Escape II - four years; enhanced by PFO II to five years to serve, credit time served."

In December 2001, Jones filed a motion with the sentencing court requesting jail-time credit. The judge responded to the request, informing Jones he would need to contact the Department of Corrections for information on his sentencing. The DOC replied to Jones's request, stating that he

was not eligible for jail-time credit for time served prior to his felony sentence since he was already serving time for his misdemeanor when he escaped.

At some point, Jones apparently filed a petition for a writ of *habeas corpus* in federal court. But that petition and the decision on that matter are not in the record. On June 2, 2003, Jones filed a "Motion to Stop Further Execution of Imprisonment" with the Jefferson Circuit Court. The motion claimed that his judgment of conviction had been erroneously interpreted; Jones claimed he had been sentenced to "only credit time served and to no imprisonment of actual custody." The motion was denied. Jones appealed.

In October 2003, Jones filed a second motion, entitled "Motion for Jail Time Credit; or to Cease Further Incarceration." In support of this motion, Jones reiterated his position that he had only been sentenced to "credit time served." Again, the motion was denied and Jones appealed. Jones's appeals were later consolidated and this action follows.

Appeal Number 2003-CA-001592-MR

We will first address the issue raised in appeal number 2003-CA-001592-MR, the denial of Jones's "Motion To Stop Further Execution of Imprisonment." We note that the motion did not state under which rule of procedure it was brought; however,

since Jones is asking for relief from his final judgment, we will address the motion pursuant to CR¹ 60.02.²

CR 60.02 states that a court may relieve a party of his final judgment for, among other reasons, "mistake, inadvertence, surprise or excusable neglect,"³ or "any other reason of an extraordinary nature justifying relief."⁴

It is unclear under which provision of CR 60.02 Jones's claim falls. If it falls under CR 60.02(a) for mistake or inadvertence, it would be subject to the rule's one-year time limit. Since the filing of the motion falls well outside the one-year limit, it would necessarily fail. However, if the motion comes under CR 60.02(f) as a request for relief of an extraordinary nature, then timing is limited to a "reasonable time."

Although we are not convinced that the relief requested by Jones is of an "extraordinary nature," we will, nonetheless, discuss this motion as if brought under

¹ Kentucky Rules of Civil Procedure.

² See, Duncan v. Commonwealth, Ky., 614 S.W.2d 701, 702 (1980) ("Clearly, in requesting this Court to order the trial court to amend its original judgment, the appellant is making a motion to be relieved from the trial court's final judgment on the basis of mistake. He is not challenging the sentence per se, but the extent of time he should be credited in serving such a sentence. Consequently, he is bound by the provisions of CR 60.02.").

³ CR 60.02(a).

⁴ CR 60.02(f).

CR 60.02(f). Therefore, we will treat it as if brought within a reasonable time.

The thrust of Jones's motion is that the sentencing language in the judgment of conviction has been misconstrued to his detriment. He claims the phrase, "five years to serve, credit time served," should be read to mean that he was sentenced to *only* "credit time served," meaning no additional time in prison. In support of his argument, Jones cites to Commonwealth v. Hicks⁵ for the proposition that a judgment "should be in a simple form clearly reflecting the intention of the trial judge"⁶ and that in this case, the language is confusing; and the judge did not mean for him to serve any more time. We disagree.

The language from Hicks is applicable to this case but only in the sense that the judgment handed down by the Jefferson Circuit Court falls within its parameters. The judgment was undoubtedly in a "simple form" and, obviously, expressed the judge's intent that Jones be imprisoned for five years. This interpretation is clear from the fact that Jones was sentenced to "five years to serve." The inclusion of the language, "credit time served," does not indicate, as Jones argues, that the trial judge intended Jones to serve only the time he had

⁵ Ky., 869 S.W.2d 35 (1994).

⁶ *Id.* at 37-38.

already spent in jail. Considering that at the time of sentencing Jones had yet to serve the time he had left on his original misdemeanor conviction, Jones's strained interpretation would lead to an absurd result. So we affirm the denial of Jones's motion.

Appeal Number 2003-CA-002410-MR

Jones's second appeal, 2003-CA-002410-MR, is from the denial of his "Motion for Jail Time Credit; or to Cease Further Incarceration." That motion reiterates Jones's contention that his judgment of conviction had been improperly interpreted and, assumedly, requests that he be granted more jail-time credit.

There are two statutes particularly applicable to this motion. KRS⁷ 532.120(3) states, "[t]ime spent in custody prior to the commencement of a sentence *as a result of the charge that culminated in the sentence* shall be credited by the court imposing sentence toward service of the maximum term of imprisonment."⁸ This section was interpreted by the Court in Mills v. Commonwealth.⁹ The Court quoted the commentary to KRS 532.210(3), which reads, "'this subsection provides credit only for the amount of time spent in custody for the offense for

⁷ Kentucky Revised Statutes.

⁸ Emphasis added.

⁹ Ky.App., 723 S.W.2d 859 (1986).

which an offender stands convicted."¹⁰ The Court held that this statement "offers a stronger indication that only the time spent in custody, which is solely due to the charge for which a defendant is ultimately sentenced, should be credited against that sentence."¹¹

Also applicable to Jones's claim is KRS 532.110. That section states that although the decision to run sentences consecutively or concurrently is typically within the province of the trial court, an exception applies when the conviction is for escape. KRS 532.110(3) states:

Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, during an escape from imprisonment, or while he awaits imprisonment, the sentence imposed for that offense may be added to the portion of the term which remained unserved at the time of the commission of the offense. *The sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively with any other sentence which the defendant must serve.*¹²

In this case, Jones was originally sentenced to six-months (or 180 days) for his misdemeanor shoplifting conviction. Before he had served that sentence, he was released on work release from which he escaped. After being taken back into

¹⁰ *Id.* at 860.

¹¹ *Id.*

¹² Emphasis added.

custody, Jones served 182 days before being sentenced for the escape and PFO charges. He now claims that the 182 days should be credited against his current five-year sentence.

Jones is simply mistaken. Looking at the language of KRS 532.110, 532.120, and the applicable language in Mills, it is obvious that Jones has not accumulated any jail-time credit. Because he had not served the sentence for his misdemeanor charge prior to his escape, the time he spent in custody prior to sentencing was not "as a result of the charge that culminated in the sentence"; rather, it was a result of the time he already owed the Commonwealth. Moreover, because his later sentence was for escape, KRS 532.110 prevents it from running concurrently with the sentence for his misdemeanor. Therefore, the running of Jones's sentence consecutively with his misdemeanor charge was proper, as was the denial of his request for jail-time credit.

For these reasons, the decisions of the Jefferson Circuit Court denying Jones's motions are affirmed.

ALL CONCUR.

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